(b) (20)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 118 of 2003

Kiritram

Vs.

State of Chhattisgarh

JUDGMENT

Noted.
SA
11/6/07

Post for: 11.06.2007

Sd/-
Sunil Kumar Sinha
Judge

(21)

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 118 of 2003

APPELLANT	Kiritram S/o Mahasingh Gond, aged 40 years, R/o village Padadah, P.S. Kasdol, Distt.- Raipur (C.G.)
	Versus
RESPONDENT	State of Chhattisgarh through P.S. Kasdol, Distt.- Raipur (C.G.)

(Appeal under Section 374 (2) of Cr.P.C.)

Appearance:

Shri Ratindra Mishra, counsel for the appellant.

Shri Ashish Shukla, Govt. Advocate for the State/ respondent.

JUDGMENT
(11.06.2007)

SUNIL KUMAR SINHA, J.

1. This appeal is directed against the judgment of conviction and order of sentences dated 31.10.2002 passed in Sessions Trial No. 222/2002 by the Additional Sessions Judge, Baloda Baazar, District- Raipur, by which the appellant has been convicted under Sections 376 (1) & 306 I.P.C. and sentenced to undergo R.I. for 10 years and to pay a fine of Rs.1,000/- & R.I. for 8 years and to pay a fine of Rs.1,000/-, in default of payment of fine amounts to further undergo R.I for one-one year in each count, respectively, with a further direction to run the sentences concurrently.

2. The brief facts are that the deceased-Sahetrin Bai, aged about 15 years, was the daughter of the appellant from the wed-lock of appellant and Ganga Bai (P.W.-2), who was married with

the appellant under *Chudi* custom, 18-19 years prior to the date of incident. The incident took place on 9.4.2002, when the deceased committed suicide by putting herself on fire after pouring kerosene oil on the body. The case of the prosecution is that 4 months prior to the date of incident, deceased-Sahetrin Bai had told her mother that the mother should call the elder persons of the village before whom she wanted to disclose some facts. On this, on a particular day, Ganga Bai called the village Patel etc. before whom the deceased narrated that she will not live in her house as her father commits bad things with her. On this, the villagers had advised and they had cautioned the appellant not to do such things, on which, the appellant said that the daughter does not recognize him as father and after departure of the *Panchas*, he started quarreling with the deceased and he had also beaten her. The further case of the prosecution is that due to sexual intercourse committed by the father, the girl became pregnant and ultimately she committed suicide on 9.4.2002. The matter was reported to the police and a merg intimation (Ex.-P/1) was recorded. Inquest, Ex.-P/4 was prepared, the body was sent for postmortem and the postmortem report (Ex.-P/6) was received. Based on merg intimation and further investigation, the F.I.R. (Ex.P/11) was recorded and after completion of usual investigation, the charge-sheet was filed.

3. The appellant was charged with Sections 376 (1) & 306 I.P.C. to which he denied.

4. The Sessions Court recorded a finding that the girl was aged about 15 years and she was subjected to forceful sexual intercourse by father, due to which, she became pregnant and ultimately, on the abetment, she committed suicide on 9.4.2002.

5. Learned counsel for the appellant has not disputed the age, suicidal death and relationship between the parties. He argued that on the basis of material available on record, the offences u/ss 376 (1) & 306 I.P.C. would not be made out and the appellant is entitled for acquittal.

6. On the other hand, learned counsel for the State opposed these arguments and supported the judgment of conviction and order of sentences passed by the Sessions Court.

7. I have heard the learned counsel for the parties at length and have also perused the records of the sessions case.

8. Ganga Bai (P.W.-2) has deposed that when her daughter was not going to work, she asked her, on which the daughter said that she should call the village people, on which, the village people were called and the daughter narrated before them that her father wants to keep her as his wife and in the night, he treats her as a wife, meaning thereby, he plays with her modesty. The village people had advised and cautioned her husband saying that if he does not leave all this, he will not be able to live in the society. She has also deposed that she herself had seen the appellant trying to catch hands and arms etc. of the daughter.

9. Chamralal (P.W.-3) is village Patel. He has deposed vide para-2 that 4 months prior to the date of incident, the girl had called a village *Panchayat* and had openly narrated the story in the *Panchayat* that her father commits rape against her, on this, some advise was given to the appellant.

10. There is no infirmity in such evidence given by these two witnesses, as in lengthy cross-examination, the defence has not been able to bring on record any such material, on which, their such evidence may be disbelieved.

11. Dr. Yogesh Kumar Sharma (P.W.-4) had conducted the autopsy on the body of the deceased. According to autopsy report (Ex.-P/6), the deceased was aged about 15 years and she had received 100% burn injuries. The cause of death was shock due to burn injuries and it was suicidal in nature. He has also found that a fetus of about 7 ½ months has expelled through vagina along with the placenta. The hairs and nails of the fetus were well developed and the placenta has not detached from the body.

12. The Sessions Court recorded a finding that admittedly, the deceased was pregnant at the time of incident as the fetus expelled from the vagina was attached with the body and the duration of the fetus was of about 7 ½ months as stated by Dr. Yogesh Kumar Sharma (P.W.-4) and on the characteristics of the fetus, a presumption was drawn that the intercourse must have been committed against the deceased in the month of August

2001. It also recorded that at the relevant time, the girl had disclosed the factum of commission of sexual intercourse to her mother and also to the *Panchas* in the village *Panchayat*. She has clearly stated that she was subjected to forcible sexual intercourse by her father. The Sessions Court took the view that there was no reason with the girl to make false allegations against her father. It has also taken the view that in the normal circumstance, no daughter will make allegations of a crime like rape against her father and she will not dare to make false allegations to her mother and also in the village *Panchayat* where many respectable persons of the society are present.

13. It is a fact of common prudence that such kind of allegations are exception in our society. Normally, nobody makes such allegations against her own father, that too disclosing it to the mother and also saying the mother to call the *Panchayat* and then further disclosing in *Panchayat* also. There appears to be no reason also with the girl to make such statement. There is no reason with the mother and Patel etc. to make false statements in this regard as nothing could be brought on record against their testimony and the statement of the girl made before them would be relevant u/s 32 of the Evidence Act as it was a verbal statement of a relevant fact because it was as to the cause of her death and it relates to circumstance of transaction with resulted in her death. Such statement of fact is supported with the medical evidence to the extent that the deceased was carrying pregnancy of 7 ½ months at the time of her death. Therefore, in

the facts and circumstances of the case, the Sessions Court committed no error of law in holding the appellant guilty of offence punishable u/s 376 (1) I.P.C. on the basis of such evidence adduced by the prosecution.

14. So far as the offence u/s 306 I.P.C. is concerned, for the said offence, there must be evidence of instigation, co-operation or initial assistance to the deceased to commit would be suicide. The punishment for abetment to suicide can be awarded when abetment as defined u/s 107 I.P.C. appears to be proved. Section 107 I.P.C. provides as under:

> "**107. Abetment of a thing.**- A person abets the doing of a thing who-
>
> *First.*-Instigates any person to do that thing; or
>
> *Secondly.*-Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or
>
> *Thirdly.*-Intentionally aids, by any act or illegal omission, the doing of that thing.
>
> *Explanation 1.*-A person who, by willful misrepresentation, or by willful concealment of a material fact which he is bound to disclose, voluntarily causes or procures or attempts to cause or procure, thing to be done, is said to instigate the doing of that thing.

15. In the present case, the victim had disclosed the story of commission of rape to her mother immediately when such act was committed by father. She had also requested to call the *Panchayat* and a village *Panchayat* was called, in which, she disclosed about commission of rape by her father. At that time, she was carrying pregnancy of about 3 ½ months. When it

reached to the advance stage of 7 ½ months, she committed suicide by putting her on fire after pouring kerosene oil on her. The circumstance would show that from the very first day of commission of rape and thereafter from the date of its disclosure to the mother and also to the villagers in village *Panchayat*, the girl was under mental depression but she did not do any such act immediately because she was not sure about the pregnancy and ultimately, when advance stage of pregnancy came i.e. 7 ½ months, she found no way except to commit suicide. The act of the appellant amounts to abetment. All these circumstances constituted abetment for commission of suicide by girl, who was left with no way except to do this, for which, the appellant alone was responsible. In the opinion of this Court, the Sessions Court further committed no error of law by convicting the appellant u/s 306 I.P.C. also.

16. There appears to be no illegality in the judgment of conviction and order of sentences passed by the Sessions Court warranting interference by this Court.

17. The appeal has no merit, the same deserves to be dismissed and is accordingly dismissed.

Sd/-
Sunil Kumar Sinha
Judge

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